

SENATE BILL 2556

By Norris

AN ACT to amend Tennessee Code Annotated, Section 50-7-213; Section 50-7-306; Section 50-7-404 and Section 50-7-715, relative to unemployment insurance.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 50-7-213, is amended by adding the following as a new subsection:

(f)

(1) The taxable wage base shall be adjusted in accordance with subsection (e), and, if the balance is below the trigger level at the subsequent reading of the unemployment trust fund balance, the taxable wage base shall not change.

(2) The adjustment of the taxable wage base, if any, based on findings made and published on June 30 in accordance with § 50-7-403(j) shall be effective on January 1 of the following year.

(3) The adjustment of the taxable wage base, if any, based on findings made and published on December 31 in accordance with § 50-7-403(j) shall be effective on July 1 of the following year.

SECTION 2. Tennessee Code Annotated, Section 50-7-306, is amended by deleting the section in its entirety and substituting instead the following language:

(a) As used in this section:

(1) "Active seasonal period" means the regularly recurring period of twenty-six (26) consecutive weeks or less within a calendar year as approved by

the department in which a seasonal employer customarily carries on all work operations;

(2) "Inactive seasonal period" means the period within a calendar year in which there is a customary cessation of all work operations and is other than the active seasonal period;

(3) "Non-seasonal wages" mean wages earned in employment other than seasonal employment;

(4) "Reasonable assurance" means a written notice that the employee will be employed by the seasonal employer in the same or similar capacity during the following active seasonal period;

(5) "Seasonal employer" means an employer who customarily employs workers only during a regularly recurring period of twenty-six (26) consecutive weeks or less within a calendar year and has been determined to be a seasonal employer by the department;

(6) "Seasonal employment" means employment within the active seasonal period, as approved by the department;

(7) "Seasonal wages" means remuneration earned during seasonal employment by a seasonal worker who has received actual written notice prior to performing any seasonal work in the active seasonal period that the wages are potentially excludable from the base period as defined in § 50-7-218; and

(8) "Seasonal worker" means an individual who has earned seasonal wages from a seasonal employer during the approved active seasonal period.

(b) **Determination of Seasonal Employer Status.** Effective July 1, 2020:

(1) No employer shall be considered a seasonal employer until the department issues a written determination that an applicant is a seasonal employer;

(2) An application for a seasonal employer determination must be made on forms prescribed by the department and must be received by the department between September 1 and October 31 each year;

(3) At the time of application, the employer shall have an experience rating pursuant to § 50-7-403(b)(1)(A); shall have no unpaid liability, including lien fees, penalties, or interest charges; and shall have not been delinquent in submitting any premium and wage reports or payment required under this chapter in the four (4) quarters preceding the application;

(4) Upon application for seasonal employer status, the department shall determine whether the employer is seasonal and, if seasonal, the employer's active seasonal period. The determination will be effective January 1 through December 31 of the following calendar year and shall not have any retroactive effect;

(5) The determination shall include the beginning and ending dates of the seasonal employer's active seasonal period. If the beginning or ending date for the active seasonal period falls within any calendar week, the entire week is counted as within the active seasonal period;

(6) Any seasonal employer determination rendered with respect to an employer pursuant to this section shall be final and conclusive upon the employer for all purposes and in all proceedings whatsoever unless the employer has timely filed with the division of employment security a written application for review and redetermination in accordance with § 50-7-404(h);

(7) The department may, on its own motion, reconsider the active seasonal period and seasonal employer status of any seasonal employer;

(8) The department shall terminate the employer's seasonal employer status upon receipt of a written request from the seasonal employer requesting termination of the seasonal employer status; and

(9) If any seasonal worker performs services for the same seasonal employer outside the employer's designated active seasonal period and in excess of twenty-six (26) consecutive weeks in a calendar year, the seasonal employer is disqualified as a seasonal employer and all wages paid by the seasonal employer to all seasonal workers shall be considered non-seasonal wages.

(c) Notification to Seasonal Workers. Effective July 1, 2020:

(1) A seasonal employer shall conspicuously display the department's seasonal determination on the employer's premises;

(2) Each seasonal worker or prospective seasonal worker shall receive written notice from the seasonal employer prior to the beginning of each active seasonal period that the seasonal wages are potentially excludable from the base period as defined in § 50-7-218. The notice shall:

(A) Be provided prior to the performance of any service for the seasonal employer;

(B) Advise the seasonal worker of the beginning and ending dates of the active seasonal period; and

(C) Contain the department's contact information for any inquiries by the seasonal workers; and

(3) The employer shall provide the seasonal worker with written notice of any subsequent change in the employee's status as a seasonal worker.

(d) Payment of Benefits to Seasonal Workers. Effective July 1, 2020:

(1) Wages from seasonal employment shall not be included in the base period as defined in § 50-7-218 for any week of unemployment commencing during the inactive seasonal period between two (2) successive active seasonal periods, if the claimant performs the services in an active seasonal period and a reasonable assurance is provided that the claimant will perform the service for the seasonal employer during the following active seasonal period;

(2) If benefits are denied to a seasonal worker for any week solely as a result of subdivision (d)(1) and the seasonal worker is not offered an opportunity to perform in the next active seasonal period for which there was a reasonable assurance of employment, the seasonal worker is entitled to retroactive payment of benefits for each week that the seasonal worker previously filed a timely claim for benefits; and

(3) Wages from seasonal employment shall be included in the base period as defined in § 50-7-218 for any week of unemployment commencing during the employer's active seasonal period.

SECTION 3. Tennessee Code Annotated, Section 50-7-404(h)(1), is amended by adding the following new subdivision:

(F) Any determination of seasonal employer status;

SECTION 4. Tennessee Code Annotated, Section 50-7-715(b)(2), is amended by deleting the subdivision in its entirety and substituting instead the following language:

(2) The commissioner shall further assess a penalty equal to fifteen percent (15%) for the first instance of overpaid benefits described in subsection (a). The first instance shall mean all consecutive claim weeks of unemployment benefits paid within a benefit year to any person when such benefits were received by knowingly misrepresenting, misstating, or failing to disclose any material fact. The commissioner

shall further assess a penalty equal to thirty-five percent (35%) for the second and each subsequent instance of overpaid benefits as described in subsection (a). Monies collected by this penalty shall be used to defray the costs of deterring, detecting, or collecting overpayments. The penalty provided in this subdivision (b)(2) is in addition to the penalty provided in subdivision (b)(1).

SECTION 5. The headings to subsections in this act are for reference purposes only and do not constitute a part of the law enacted by this act. However, the Tennessee Code Commission is requested to include the headings in any compilation or publication containing this act.

SECTION 6. This act shall take effect July 1, 2016, the public welfare requiring it.